

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ERIC R. BAHE, Custodian, CGM Roth
Conversion IRA,

Plaintiff,

v.

FRANKLIN/TEMPLETON DISTRIBUTORS,
INC., and WILLIAM J. LIPPMAN,

Defendants, and

FRANKLIN BALANCE SHEET INVESTMENT
FUND,

Nominal Defendant.

Civil Action No. 04-11195 (MLW)

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS RENEWED MOTION
FOR APPROVAL OF THE PARTIES' STIPULATION OF DISMISSAL**

Pursuant to this Court's September 8, 2006 Order, Plaintiff, Eric R. Bahe, Custodian, CGM Roth Conversion IRA, respectfully submits this memorandum of law in support of his renewed motion for approval of the parties' stipulation of dismissal of this litigation.

On May 4, 2006, the parties filed a joint Stipulation of Dismissal (the "Stipulation") pursuant to Fed. R. Civ. P. 41(a)(ii), dismissing this derivative action "with prejudice to the Plaintiff, Eric R. Bahe, Custodian, CGM Roth Conversion IRA, and without prejudice to the Nominal Defendant Franklin Balance Sheet Investment Fund [(the "Fund")], and any shareholders of [the Fund] other than the Plaintiff, Eric R. Bahe, Custodian, CGM Roth Conversion IRA, and without costs to any party" Rule 41(a)(ii) Stipulation of Dismissal (Docket No. 53). Subject to the Court's approval of the parties' Stipulation, Defendants agreed to pay Plaintiff's attorneys \$100,000 in fees and expenses. At a status conference

held on June 13, 2006 (the "Status Conference"), the Court declined to approve the Stipulation of Dismissal of Plaintiff's derivative action, and directed the parties to file a memorandum of law proposing a method for providing notice of the proposed dismissal of this action to the shareholders of the Fund.

Pursuant to the Court's directive, on July 14, 2006, Plaintiff submitted a proposed notice and memorandum of law, proposing that notice of the proposed dismissal be published in the *Investors' Business Daily*, a widely-circulated national business-oriented publication. On September 7, 2006, this Court held a hearing on the proposed notice submitted by Plaintiff, at which the Court required certain changes to the proposed notice and ordered the Plaintiff to submit a revised notice to be published in the *Investors' Business Daily* and a press release containing the same information.

For the reasons stated by the Court at the September 7, 2006 hearing, on September 8, 2006, the Court entered the following Order:

1. The parties shall, by the close of business on September 12, 2006, file a revised notice and a press release that contains the changes outlined by the court. Both the revised notice and the press release shall contain: the name and number of the case in large and/or bold type; the address of the court; and shall state that any objection to the settlement shall be filed by October 20, 2006.
2. The parties shall, by September 19, 2006, publish the legal notice in *Investors Business Daily* and cause the press release to be distributed to the financial wire services.
3. The parties shall, by October 30, 2006, file a renewed motion to enter dismissal with a supporting memorandum of law.

Pursuant to the Court's directive, on September 12, 2006, Plaintiff submitted a

revised notice.¹ On September 19, 2006, the Court entered an Order approving the revised notice and ordering Plaintiff to publish the revised notice and issue the press release containing the same information “forthwith.” Order at 1 (Docket No 64). Pursuant to the Court’s September 19 Order, on September 20, 2006, Plaintiff’s counsel caused the court-approved press release to be issued on *BusinessWire*. Declaration of Carmen Iguina ¶4. Plaintiff’s counsel also caused the court-approved notice to be published in the September 22, 2006 edition of the *Investors’ Business Daily* under the “Legal Notices” banner in the Classified Section. *Id.* ¶2. Both the press release and published notice advised that the deadline for objections to the proposed dismissal of this Action must be filed by October 20, 2006. As of the date of the filing of this memorandum (October 30, 2006), no objections to the dismissal of this action have been filed with the Court. *Id.* ¶5.

CONCLUSION

Notice has been provided to the shareholders of the Fund in the form and manner required by the Court and no objections have been filed. Plaintiff therefore respectfully requests that this Court grant his renewed motion for approval of the parties’ stipulation of dismissal and enter an Order dismissing this action with prejudice to Plaintiff, and without prejudice to the Fund, and any shareholders of the Fund other than the Plaintiff.

¹On September 18, 2006, Plaintiff’s counsel sent a letter to the Court advising it that the docket did not reflect any action by the Court on Plaintiff’s request for approval of the revised notice submitted on September 12, 2006. See Letter (Docket No. 63). Plaintiff’s counsel further advised the court that “*Investor’s Business Daily* requires legal notices to be submitted by 3 p.m. (EDT) two days prior to publication. Under these circumstances, Plaintiff will not be able to effect publication of the Notice by September 19. Plaintiff will effect that publication, and issue the Press Release, as soon as possible after approval of their form by your Honor.” *Id.*

Dated: October 30, 2006

Respectfully submitted,

Plaintiff Eric R. Bahe
by his Attorneys,

/s/ Edward F. Haber

Edward F. Haber (BBO No. 215620)
Shapiro Haber & Urmy LLP
53 State Street
Boston, MA 02109
Tel: (617) 439-3939

Robert C. Schubert, Esq.
Juden Justice Reed, Esq.
Schubert & Reed LLP
Three Embarcadero Center
Suite 1650
San Francisco, CA 94111
Tel: (415) 788-4220

Certificate of Service

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF") and paper copies will be sent to those indicated as non-registered participants on the 30th day of October, 2006.

/s/ Edward F. Haber

Edward F. Haber